

BOARD OF APPEALS CASE NO. 4867

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BEFORE THE

APPLICANTS: Monir and Asghar Moradi

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ZONING HEARING EXAMINER

**REQUEST: Variance to construct an
in-ground swimming pool within the
required front yard setback; 601 Millwood
Drive, Fallston**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 11/4/98 & 11/11/98

HEARING DATE: January 27, 1999

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Record: 11/6/98 & 11/13/98

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Monir and Asghar Moradi, appeared before the Hearing Examiner requesting a variance to Section 267-26(C)(4) of the Harford County Code, to permit an in ground swimming pool within the required 40 foot front yard setback in an RR District.

The subject parcel is located at 601 Millwood Drive in the Third Election District. The parcel is identified as Parcel No. 812, in Grid 2-F, on Tax Map 55. The parcel contains .74 acres, more or less, all of which is zoned RR, Rural Residential.

Mr. Asghar Moradi appeared and testified that he and his wife have owned the subject property for approximately 2 years and that they are requesting a variance to construct a swimming pool with dimensions of 22 feet by 40 feet. The witness said the pool would also have a deck which would be 29 feet from the front setback. The witness said that his children wanted the pool and that he had a swimming pool at his previous residence. The witness said that the septic area is located to the rear of his house and his well is in front of the house. The witness said that the pool will be 33 feet from the setback line and the deck 29 feet from the setback line.

Mrs. Monir Moradi appeared and testified that she was present for and supported her husband's testimony. Mrs. Moradi also submitted a medical report indicating that she has a low back strain and that she would benefit from water therapy in a pool or a hot tub.

Several area residents appeared and testified that they were opposed to the Applicants' request and they expressed concern about drainage, closeness to the road, and impact on property values. One area resident also suggested that the pool could be realigned on the property to avoid the need for the variance.

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CONCLUSION:

The Applicants are requesting a variance to Section 267-26(C)(4) of the Harford County Code, which provides:

“No accessory use or structure shall be established within the required front yard, except agricultural, signs, fences, walls or parking areas and projections or garages as specified in Section 267-23(C), Exceptions and Modifications to Minimum Yard Requirements.”

Section 267-11 of the Harford County Code permits variances, provided the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.**
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.**

“....The need sufficient to justify an exception must be substantial and urgent and not merely for the convenience of the Applicant, inasmuch as the aim of the ordinance is to prevent exceptions as far as possible, in a liberal construction allowing exceptions for reasons that are not substantial and urgent would have the tendency to cause discrimination and eventually to destroy the usefulness of the Code.” City of Baltimore v. Byrd, 191 Md. 632.

In a zoning context, unique aspects of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. Uniqueness of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historic significance, access or non-access to navigable water, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing and non-bearing walls. North v. St. Mary’s County, 99 Md. App. 512.

The testimony introduced by the Applicants was that they had a pool at their

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previous residence and their children and themselves would like to have a pool on the subject property. The Applicants did not introduce evidence of uniqueness of property nor evidence that approval of the variance would not be substantially detrimental to adjacent properties or materially impair the purpose of the Code.

Conversely, several area residents did appear and testify in opposition to the Applicants' request and expressed concerns regarding drainage, closeness of the proposed pool to the road, impact on their property values, and whether the pool could be relocated on the property to alleviate the need for the variance.

It is the finding of the Hearing Examiner that the Applicants have failed to meet the burden of proof; therefore, it is the recommendation of the Hearing Examiner that the requested variance be denied.

Date FEBRUARY 16, 1999

L. A. Hinderhofer
Zoning Hearing Examiner